

REMARKS

Claims 1-13, 15, 16, 23-25, 35 and 36 are pending in the instant application. The Examiner has required a restriction of the claimed invention under 35 U.S.C. 121 from the following groups:

- I. Claims 1-10 in part, drawn the compound of the formula I of Claim 1, wherein the moiety $Y-R^2$ is a phenyl optionally substituted with non-heterocyclic groups; the moiety $W-R^5$ is a non-cyclic group; R^3 and R^4 are hydrogen; the $Z-R^6$ moiety is a phenyl optionally substituted with non-heterocyclic groups; R^1 is $-C(O)-R^{1'}$ as defined in Claim 9.
- II. Claims 1-10 in part, drawn compounds of the formula I of Claim 1, but not encompassed by Group I.
- III. Claims 11-13, drawn to a method of treating cancer using compounds of the formula I.
- IV. Claims 15-16, drawn to compositions of the formula I in combination with a second active ingredient.
- V. Claims 23-25, drawn to processes of using compounds of the formula I in combination with a secondary factor.
- VI. Claims 35-36, drawn to processes of using compounds of the formula I to affect mitosis.

The Examiner suggests that the claims of Groups I-VI do not relate to a single general inventive concept, because they lack the same corresponding special technical feature. The Examiner suggests that the structural feature common to the inventions of Groups I-VI is a pyrazoline moiety, which is well known in the art.

Applicants respectfully elect Group I for examination, with traverse. Applicants have cancelled Claims 1 and 2 and amended Claims 3 and 4 to reflect the limitations set forth in Examiner's Group I. Applicants have also amended the claims previously dependent on Claim 1

to now be dependent of Claim 3. Applicants have also amended Claim 8 to correct an unintentional error in naming of the second compound (Compound 11-2 as described in the application as originally filed on pages 95-96).

Applicants respectfully contend that there is a special technical feature that is incorporated in the compounds currently claimed in Claim 3 of the instant application that distinguishes those compounds from merely being substituted 3-pyrroline derivatives. Applicants note that the compounds generically disclosed and claimed in the instant application all incorporate cyclic substituents at the 3- and 5-positions of a 1-substituted 3-pyrazoline ring. This particular feature of the disclosed KSP inhibitors useful for the treatment of cancer distinguishes those compounds from merely 3-pyrazoline or N-substituted 3-pyrazoline. For this reason, Applicants respectfully contend that the instantly claimed compounds do share a "special technical feature" and the Restriction Requirement between Groups I and II is now moot and should be withdrawn.

Applicants respectfully note that all of the currently pending inventions are directed to compounds falling within the scope of Claim 3 as amended or their use in the treatment of cancer. Applicants respectfully contend that a search of the prior art directed to the 3-pyrazoline compounds having (at the least) substituents in the 1-, 3- and 5-position (the latter two being phenyl) would not be an undue burden on the Examiner and would also clearly encompass all of the previously disclosed uses of such compounds (if such uses were previously known). A focused search on formula I compounds would be comprehensive for all of Groups I and III-VI described by the Examiner. MPEP 803 provides:

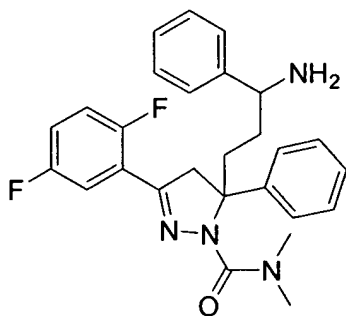
There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required.

Because there would be no serious burden on the Examiner in searching such closely related inventions of Groups I and III-VI as set forth by the Examiner, Applicant respectfully contends that the restriction requirement is improper.

Applicants are required to elect a single disclosed species with a corresponding chemical structure for prosecution on the merits. Applicants hereby elect, with traverse, as a species the following compound:

5-(3-amino-3-phenylpropyl)-3-(2,5-difluorophenyl)-N,N-dimethyl-5-phenyl-4,5-dihydro-1H-pyrazole-1-carboxamide



or the pharmaceutically acceptable salt thereof.

Applicants respectfully contend that Claims 3-4 and 8 are readable on the elected species.

Applicants respectfully contend that Claims 3-4, 6-13, 15-16, 23-25 and 35-36 as amended and filed are allowable and an early Notice of Allowance is earnestly solicited. If a telephonic communication with Applicants' representative will aid in the advancement of the prosecution of this application, please telephone the representative indicated below.

Respectfully submitted,

By: 

David A. Muthard
Registration No. 35,297
Attorney for Applicants

MERCK & CO., INC.
P.O. Box 2000 - RY 60-30
Rahway, New Jersey 07065-0907
Telephone No. (732) 594-3903

Date: March 1, 2007